

MEDAPHOR NORTH AMERICA INC. HEARTWORKS/BODYWORKS TERMS AND CONDITIONS

THIS AGREEMENT is made on the date of the Sales Invoice between Medaphor North America Inc. a corporation registered in Delaware and whose address is 13010 Morris Road, Building 1, Suite 600, Alpharetta, GA 30004, U.S.A. (“MNA”) and the person, partnership, company or other undertaking to whom the Sales Invoice is addressed (the “Customer”). In this Agreement the following expressions shall have the following meanings unless inconsistent with the context:

“Business Day” any day other than a Saturday or Sunday or a public or bank holiday in Georgia, USA

“Business Hours” the hours of 9.00am to 5.00pm inclusive UK time on any Business Day

“Consequential Loss” pure economic loss, loss of profit, loss of business, depletion of goodwill, loss of anticipated savings and like loss

“Copy” an individual copy on electromagnetic recording material of one or more of the programs constituting the Software

“Equipment” the items of equipment supplied and specified on the sales invoice

“Initial Costs” the System Purchase Price and that part of the Price for the first year in which the Software is licensed

“Intellectual Property Rights” any and all patents, trademarks, trade names, service marks, copyright, moral rights, rights in design, rights in databases, know-how, Confidential Information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating thereto

“Loss of Data” a loss of or corruption to data or programs held or used by or on behalf of the Customer

“Open Source Software” the open source software incorporated either as a derivative or aggregated work with the System and which is provided to the Customer free of charge on an “as is” basis without warranty in any kind and otherwise under the relevant licence terms detailed in the file c:\iml\licence.txt.

“Sales Invoice” means the invoice for the supply of HeartWorks systems (hardware and or software)

“Services” the system maintenance services to be provided to the Customer by MNA as specified in clause 8.1

“Site” the Customer’s premises as defined on the front of this invoice

“Software” the computer software licensed to the Customer by MNA under this Agreement and excluding, for the avoidance of doubt, the Open Source Software

“System” together the Equipment and the Software

“System Purchase Price” the price to be paid for the System as specified in the Sales Invoice

“Warranty Extension Fee” the fee set by MNA from time to time to extend the warranty period beyond that set out in clause 10.1 below.

1 MNA’S OBLIGATION

MNA shall supply the System and the Services, at the System Purchase Price, at the Site subject to the other terms and conditions of this Agreement.

1.1 The Customer shall within twenty-eight (28) days of the date of invoice, pay for the System and Services.

1.2 If any sum payable under this Agreement is not paid when due then, without prejudice to MNA’s other rights under this Agreement, that sum will bear interest from the due date until payment

is made in full, both before and after any judgment, at the interest rate prescribed in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.

1.3 If the Customer fails to pay any monies on the due date or does not comply with an obligation imposed upon the Customer under this Agreement then, without prejudice to any other right or remedy available to MNA, MNA shall be entitled to:

1.3.1 withhold the supply of any Equipment, Software and/or Services to be provided to the Customer by or on behalf of MNA until such payment is made;

1.3.2 suspend the performance of any other obligation owed by MNA under this Agreement until such payment is made; and/or

1.3.3 require payment in full by the Customer for all the Equipment, Software and Services which the Customer has agreed to purchase under this Agreement before supplying the Equipment, Software and Services; and/or

1.3.4 terminate this Agreement under clause 13.1(a) or clause 13.1(b) as is appropriate in the circumstances.

2 CUSTOMER'S OBLIGATIONS

The Customer shall:

2.1 purchase the System subject to the terms and conditions of this Agreement;

2.2 pay all sums, fees and other charges due under this Agreement upon the dates provided under this Agreement;

2.3 Implement any required upgrades to the System notified to it by MNA within 30 days of such notification and where requested by MNA allow MNA's personnel access to the Site and the System to implement such upgrades; and

2.4 take all necessary precautions to protect the health and safety of MNA's personnel whilst at the Site or any other location of the Customer.

3 SOFTWARE OWNERSHIP

The Customer acknowledges that all Intellectual Property Rights in or relating to the Software and all related documentation and all parts of the Software shall remain the exclusive property of MNA or its licensors.

4 SOFTWARE LICENCE AND PAYMENT

Subject to payment by the Customer to MNA of the System Purchase Price MNA hereby grants to the Customer a non-exclusive, non-transferable licence to use the Software upon the terms and conditions of this Agreement.

5 SOFTWARE RESTRICTIONS

5.1 The licence hereby granted and the Customer's rights to use the Software are subject to the following restrictions:

5.1.1 the Software shall be used only by the Customer for the purposes of the Customer's own internal business at the Site or at such other location as MNA may previously agree in writing;

5.1.2 the Software shall be used only on the Equipment;

5.1.3 the Customer shall not assign, sub-license, charge or otherwise dispose of or grant rights over or out of the licence hereby granted or the Software and shall not attempt to do any such thing;

5.1.4 the Customer shall not copy or reproduce in any way the whole or a part of the Software in machine or eye readable form, except that the Customer may maintain up to one (1) Copy of the Software in machine readable form for normal operational security and back-up purposes and this licence applies to such Copy as it applies to the original Copy of the Software supplied to the Customer. Such Copies and the media on which they are stored shall be the property of MNA and the Customer shall ensure that all such Copies bear MNA's proprietary notice;

5.1.5 the Customer shall not attempt to ascertain or list the source programs or source code relating to the Software;

5.1.6 the Customer shall not decompile or translate the Software into any other computer language nor attempt so to do, save to the extent permitted by law; and

5.1.7 the Customer shall not be entitled to maintain the Software itself, save to the extent permitted by law.

5.2 The Customer agrees not to use the Software or the associated documentation save in accordance with this Agreement.

5.3 Save as provided in clause 5.1.4 the Customer shall only use the single original Copy of the Software provided on the electromagnetic or optical recording material supplied by MNA.

5.4 Notwithstanding clause 5.1.1 the Customer shall not, without the prior written consent of MNA, use the Software as part of a computer bureau business or for a business which the Customer does not at the date of this Agreement carry on.

5.5 The Customer shall not interfere with or attempt to circumvent the operation of any dongle or other device whose function is to prevent the unlawful copying or use of the Software.

6 SOFTWARE MODIFICATIONS

The Customer shall not modify, alter or in any way interfere with the Software or merge the Software with other data, programs or systems save to the extent permitted by law. Without prejudice to any other remedy of MNA if the Customer (in breach of this clause) does modify, alter, interfere with or merge the Software no such modification, alteration, interference or merger however extensive shall derogate from the obligations of and restrictions on the Customer under this Agreement which shall thenceforth apply to the Software as so modified, amended, altered, interfered with or merged.

7 CONTROL, RISK AND TITLE

7.1 Control of and risk in the Equipment shall pass to the Customer on despatch of the Equipment from MNA's premises or MNA's distribution centre in the UK.

7.2 Ownership of the Equipment shall not pass to the Customer until:

7.2.1 the System Purchase Price has been paid in full; and

7.2.2 payment is made to MNA of any sum which is at the date of this Agreement or may thereafter become due or owing from the Customer to MNA.

7.3 Until ownership of the Equipment has passed to the Customer, the Customer will hold the Equipment in a fiduciary capacity, will not obliterate any identifying mark on the Equipment or its packaging and will keep the Equipment separate from other goods.

8 MAINTENANCE FEE

8.1 Subject to the full payment of the System Purchase Price, MNA will provide twelve (12) months of maintenance support on the following basis:

8.1.1 telephone based system support during Business Hours and on Business Days; and

8.1.2 free provision of any official bug fix releases of the Software (For the avoidance of doubt this does not include any additional software modules or new variants of the system).

9 DOCUMENTATION

MNA shall provide the Customer with such documentation as it, in its reasonable discretion, considers necessary for the proper use of the System.

10 WARRANTY

10.1 MNA will remedy a material defect in the System notified to MNA in a twelve (12) month period following the date of delivery of the System, provided always that if MNA is unable to do so MNA may, at its option, replace the System.

10.2 The warranty contained in clause 10.1 is subject to the Customer complying with its obligations in this Agreement and to there having been no alterations to the System by any person other than MNA (for the avoidance of doubt no other software is to be loaded onto the system or this warranty will be invalidated).

10.3 The warranty period in clause 10.1 may be extended upon payment of the Warranty Extension Fee by the Customer to MNA.

11 GENERAL EXCLUSIONS AND LIMITATIONS OF LIABILITY

11.1 Subject to clauses 10 and 11.6 and to the maximum extent permissible in law, all conditions and warranties which are to be implied by statute or otherwise by general law into this Agreement or relating to the Equipment, the Software and/or the Services are hereby excluded.

11.2 The following provisions in this clause 11 set out MNA's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) to the Customer in respect of:

11.2.1 a breach of MNA's contractual obligations;

11.2.2 a tortious act or omission of MNA; and

11.2.3 an action arising out of a misrepresentation by or on behalf of MNA (other than a fraudulent misrepresentation) arising in connection with the performance or contemplated performance of this Agreement.

11.3 Subject to clauses 11.4, 11.5 and 11.6 the total liability which MNA shall owe to the Customer in respect of all claims under this Agreement shall not exceed the aggregate monies paid by the Customer to MNA.

11.4 MNA shall in no circumstances be liable to the Customer for any Consequential Loss.

11.5 MNA shall in no circumstances (whether before or after termination of this Agreement) be liable to the Customer for any Loss of Data.

11.6 Notwithstanding anything to the contrary contained in this Agreement MNA's liability to the Customer for:

11.6.1 death or personal injury resulting from the negligence of MNA, its employees, agents or sub-contractors;

11.6.2 damage suffered by the Customer as a result of a breach by MNA of the condition as to title or the warranty as to quiet possession implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;

11.6.3 damage for which MNA is liable to the Customer under Part I of the Consumer Protection Act 1987; and

11.6.4 fraud; shall not be limited.

11.7 The exclusions from and limitations of liability set out in this clause 11 shall be considered severably. The validity or unenforceability of any one clause, sub-clause, paragraph or sub-paragraph of this clause 11 shall not affect the validity or enforceability of any other part of this clause 11.

11.8 The provisions of this clause 11 shall survive the termination of the whole or part of this Agreement.

12 FORCE MAJEURE

Any delay in or failure of performance of any obligation by either party (save an obligation in respect of the payment of monies) shall not constitute a breach of such obligation, but only to the extent that such a delay or failure is caused by an event which is not within the reasonable control of the party otherwise in default and which such party is unable to prevent or to circumvent by the exercise of reasonable diligence, including without limitation an event such as a strike, lock-out or other

industrial action or trade dispute (whether or not involving the workforce or a part of the workforce of the party otherwise in default).

13 TERMINATION OF THE AGREEMENT

13.1 A party shall be entitled to terminate this Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any undisputed amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or
- (b) the other party commits a material breach of its obligations.

14. GOVERNING LAW

14.1 This Agreement and any disputes of claims arising out of or in connection with it or its subject matter and its formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the laws of Delaware USA.